IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

S.T.R. 57 of 2001

Date of decision :- 07-7-2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Date :- 07-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Sales Tax Revision No.57 of 2001
(Old No.948 of 1992)

The Commissioner
Sales Tax U.P. Lucknow .....Applicant/Revisionist
Versus

S/s Prakash Tubes Ltd.
Moradabad Road
Kashipur .....Respondent

Sri Pitamber Maulkhi Addl. Advocate General for the revisionist.
Sri S.K. Posti learned counsel for the respondent.

Hon'ble J. C. S. Rawat, J.

1. This revision has been directed against the judgment and order dated 03.03.1992 passed by the Sales Tax Tribunal, Bench 2 Bareilly, Camp Haldwani.

2. The brief facts for disposal of this case are that the assessee was carrying the goods from Indore to Delhi with a form No.34 on 21.7.1989. When the vehicle of the goods reached at Saiya checkpost at Agra, the Assessing Authority inspected the document and seized the goods. It was pointed out by the assessee that he was carrying the goods from Indore to Delhi which are being carried to Indore to Kashipur via Delhi. The assessing authority observed that there was a cutting in the invoice and the place of destination had been shown as New Delhi in place of Kashipur. It is also admitted to the department that the assesssee was having a form No.34 alongwith the goods. The Assessing Authority did not accept the version of the assessee and the Assessing Authority

imposed a penalty under section 15(1)(0) of the U.P Trade Tax, 1948 holding that the assessee had violated section 28A. Feeling aggrieved by the said order, the assessee preferred the second appeal under section 9 of the Sales Tax Act which was allowed vide order dated 27.2.1991 by which the penalty imposed upon the assessee was quashed. The Department feeling aggrieved by this preferred second appeal under section 10 of the Sales Tax Act and the Tribunal also dismissed the said appeal vide its order dated 03.03.1992 on the ground that no attempt to evade the tax was made by the assessee in the matter and the assessee was entering into Delhi alongwith the goods in a vehicle having a valid form No.34 under Rule 87. It was further held that the provisions of the Sales Tax Act clearly provides that if the goods are being carried from outside of U.P and also being taken to other State i.e. outside the U.P. and the State of U.P. was intervening between the two states then form no.34 is required for the transportation of the goods. It was further held by the first appellate authority that in case any goods was to carry from outside the U.P. to the to the U.P. in that case the form no.31 is required and the assessee was also having a form 31 and from 34 at the time of inspection.

3. The department feeling aggrieved by the order of the learned Tribunal preferred revision before this Court.

4. Learned Addl. Advocate General contended that the findings recorded by the Sales Tax Tribunal are

Self-contradictory and the order of the assessing authority was against the provisions of law. He further contended that there were manipulations and cuttings in the invoice which leads to take an inference that there was an intention of the assessee to evade the sales tax. Learned counsel for the respondent refuted the contention. Perusal of the provisions of section 15(1)(o), section 21A Rule 87 and Rule 83 sub-clause 4 clearly reveals that if the goods are to be taken from outside the state of U.P. to some other State through the state of U.P. the assessee is required to produce the form 34 at the time of inspection in U.P. It also evident from the provisions of the above sections that if there is any violation of section 28(A) i.e. if he is not having form no34, the assessing authority in U.P. can impose the penalty under section 15A(1)(o) under the U.P. Trade Tax Act, 1948. This being the legal proposition the assessee had a valid from no.34 at the time of inspection and the assessee had submitted an explanation before the assessing authority that the head office of the assessee was at Delhi. It is not disputed that the assessee had not the head office at Delhi. It was further submitted that the assessee had not sufficient goods from Indore to kashipur. The assessee had some goods of Delhi headquarter so the assessee loaded both the goods in the truck and he also obtained form 34 from Sales Tax Department for exporting the goods from Indore to Delhi through U.P. The assessee thought it proper that Kashipur is near to Delhi. It was convenient to the assessee to

bring the goods to Kashipur via Delhi. It is also provided under the Sales Tax Act that if any goods is being carried from outside the U.P. to the state of U.P. the assessee is required to obtain the form 31 from the Sales Tax Department. When the inspection was made by the assessing authority the truck of the assessee produced the form no. 34 and the assessee also produced the form 31. In this case, the assessee had obtained the form No.34 at the time of taking the goods to Delhi from Indore through U.P. he had also obtained the form no.31 for importing the goods from Delhi to Kashipur. I feel that there is no violation of any Rule or section 28A. As such, the findings recorded by the both the courts below are correct. The first appellate as well as the Tribunal were justified in holding that the assessee had the valid documents and there was no violation of section 28A and the assessee was not liable to pay the penalty as imposed. The Hon'ble Supreme Court has held in **The Commissioner of Sales, U.P. Vs. Oriental Carbon Ltd. 1997 N.T.N.(vol.10) p/105** that the findings of fact reached by the Tribunal that there had been no intention to cause any loss to the revenue or to evade tax in importing into State certain consignment without Form 31 the imposition of penalty on the ground of beach of provision of section 28-A was not good. The Uttaranchal High Court **in M/s Polyplex Corp. Ltd. Vs. commissioner of Trade Tax 2003 U.P.T.C. p/1097** has also taken the same view.

5. In view of the foregoing discussion, I do not find any substantial question of law involved in this

revision. As such, the revision is devoid of merit and is dismissed accordingly.

(J.C.S.Rawat, J.)

Dated 07.07.2006

LSR